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TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
Protecting Texas by Reducing and Preventing Pollution

March 29, 2012

MR CARL E EDLUND PE
DIRECTOR
MULTIMEDIA PLANNING AND PERMITTING DIVISION
US ENVIRONMENTAL PROTECTION AGENCY REGION 6
1445 ROSS AVE STE 1200
DALLAS TX 75202-5766

Re: Executive Director's Response to Public Comment and EPA Objection
Renewal
Permit Number: O2202
The Dow Chemical Company
Chemicals and Metals (2)
Freeport, Brazoria County
Regulated Entity Number: RN100225945
Customer Reference Number: CN600356976

Dear Mr. Edlund:

On November 13, 2009, the U.S. Environmental Protection Agency (EPA) Region 6 office signed a letter identifying objections to the issuance of the proposed federal operating permit for the above-referenced site. In accordance with Title 30 Texas Administrative Code (TAC) § 122.350, the Texas Commission on Environmental Quality (TCEQ) may not issue the permit until the objections are resolved. Further, the letter identifies certain additional concerns. The TCEQ understands that these additional concerns are provided for information only, and do not need to be resolved in order to issue the permit.

The TCEQ has completed the technical review of your objections and offers the enclosed Response to Comments (Response) to facilitate resolution of the objections. In addition, Ms Layla Mansuri, from the Environmental Integrity Project (EIP) commented on the permit in a letter dated October 26, 2009. To the extent possible, all EIP comments have also been addressed in the Response. Non-substantive changes unrelated to comments or objections have been made to the permit since commencement of the public notice period. A detailed explanation of all changes is contained in the enclosed statement of basis and permit.

Mr. Carl E. Edlund, P.E.
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A copy of the Response has also been submitted to the Air Permits Section Chief of the EPA. Consistent with 30 TAC Chapter 122, Subchapter D, there will be another 45-day EPA review period following mailing of the Response. As of April 3, 2012, the proposed permit is subject to an EPA review for 45-days, ending on May 18, 2012. Once all objections are resolved, the TCEQ will issue the FOP.

Consistent with Title 30 TAC §122.350, please provide an indication of your acceptance or assessment of the responses and resolutions to the objections as soon as possible. After receipt of your acceptance to the responses and resolutions to the objections, TCEQ will issue the proposed permit. Thank you for your cooperation in this matter. Please contact Mr. Tusar Swami at (512) 239-1581 if you have any questions concerning this matter.

Sincerely,



Michael P. Wilson, P.E., Director
Air Permits Division
Office of Permitting and Registration
Texas Commission on Environmental Quality

MW/TS/ts

cc: Ms. Yvonne Samson, Senior Environmental Specialist, The Dow Chemical Company,
Freeport
Air Section Manager, Region 12 – Houston
Director, Environmental Health, Brazoria County Health Department, Angleton

Enclosures: TCEQ Executive Director's Response to Public Comment and EPA Objection
Proposed Permit
Statement of Basis

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (the Commission or TCEQ) files this Response to Public Comment and EPA Objection (Response) on the application for a Federal Operating Permit (FOP) Permit No. O2202 filed by The Dow Chemical Company (Applicant or Dow). As required by Title 30 Texas Administrative Code (TAC) § 122.345, the ED shall send a notice of the proposed final action, which includes a response to any comments submitted during the comment period. These comments are summarized in this Response. The Office of Chief Clerk (OCC) timely received comment letters from Ms. Layla Mansuri, attorney on behalf of Environmental Integrity Project. The TCEQ also received an EPA objection letter dated November 13, 2009. If you need more information about this permit application or the permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found at our Web site at www.tceq.state.tx.us.

BACKGROUND

Procedural Background

The Texas Operating Permit Program requires that owners and operators of sites subject to 30 TAC Chapter 122 obtain a FOP that contains all applicable requirements in order to facilitate compliance and improve enforcement. The FOP does not authorize construction or modifications to facilities, nor does the FOP authorize emission increases. In order to construct or modify a facility, the facility must have the appropriate new source review authorization. If the site is subject to 30 TAC Chapter 122, the owner or operator must submit a timely FOP application for the site, and ultimately must obtain the FOP in order to operate. Dow applied to the TCEQ for renewal of a FOP for an Industrial Organic Chemicals, plant located 2301 N. Brazosport Blvd in Freeport, Brazoria County on September 23, 2008. Notice was published on September 24, 2009 in "The Facts" and in "La Informcion". The public comment period ended on October 23, 2009. Comments were received from Ms. Layla Mansuri. An EPA objection to the permit was also received on November 13, 2009.

Description of Site

The Dow Chemical Company has applied to the TCEQ for an FOP Renewal that would authorize the Applicant to operate the Chemicals and Metals (2) application area. The facility is located at 2301 N. Brazosport Blvd in Freeport, Brazoria County, Texas 77541. The Freeport site has a total of 25 Title V permitted areas which are based on business functions. This application area covers Chemicals & Metals (2).

Caustic 1 Process: In this process two grades of 50% sodium hydroxide, brine and condensate are produced by evaporation of water from cell effluent. Cell effluent is a weak sodium

hydroxide stream produced from diaphragm chlorine cells and received by way of pipeline into this plant.

Chlorine Process (3, 4, and 5): There are three process streams. They are mostly similar with slight variations. In these processes chlorine, aqueous sodium hydroxide and hydrogen are produced in diaphragm cell by electrolysis of brine.

All comments were submitted by Ms. Layla Mansurion behalf of the Environmental Integrity Project. They are reproduced in full below.

COMMENT 1: *TCEQ continues to release draft permits in direct violations of recent orders from EPA Administrator.*

The proposed renewal permit does not identify the emission limitations associated with eight (8) NSR permits that are incorporated by reference into the renewal draft. These permits are: 22743, 3301, 3302, 3941, 4020, 4021, 4022, 83699, (See, *New Source Review Authorization References*, starting at *Renewal-Draft* p. 24). The Applicable Requirements Summary, in turn, relies extensively on incorporation by reference. This does not "assure compliance." To the contrary, it poses a significant barrier to members of the public who wish to discover and/or comment on whether the permit assures compliance.

As explained in the Administrator's May 28, 2009 *Order Granting in Part and Denying in Part Petition for Objection to Permit*, response to Petition Number VI-227-01 (*Citgo Order*), other than minor NSR permits and permits by rule "EPA did not approve (and does not approve of) Texas' use of incorporation by reference of emissions limitations for other requirements." *Citgo Order* at 11.

Consistent with EPA's previous statement on the use on the use of incorporation by reference, I agree that the applicable emissions limits (MAERT) should be explicitly identified in CITGO's title V permit. It is especially important here where the title V permit incorporates requirements from several permits (including two PSD permits, several federal regulations, and other requirements). Moreover, the title V permit cross references the PSD permits in their entirety. Thus, EPA grants the petition on this issue with regard of those emissions limitations from minor NSR permits and permits by rule. EPA directs TCEQ to reopen the permit and ensure that all such emissions limitations are included on the face of the tile V permit. (*CITGO Order* at 11.)

In addition, the courts make clear that the compilation of emission limits and monitoring requirements in one place is a fundamental piece of the permit and should be done in a manner so as to easily identify these limits and requirements. "Title V did more than require the compilation in a single document of existing applicable emission limits, id, [42 U.S.C.] § 7661c (a), and monitoring requirements, id [42.U.S.C.] § 7661c(c). It also mandated that "[e]ach permit issued under [Title V] shall set forth...monitoring...requirements to assure compliance with the permit terms and conditions." *Id.* See, *Sierra Club, et all, v EPA*, 536 F.3d 673 (D.C. Cir. 2008). TCEQ should correct this fundamental flaw in the draft renewal and require Dow to re-publish the

revised draft for public comment.

RESPONSE 1: The ED acknowledges that air quality requirements can be voluminous. Large sites are subject to numerous federal requirements including New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Pollutants (NESHAPs), as well as state rules and permits. The federally approved operating permit program was developed with this complexity in mind, and the applicable requirement summary table and accompanying unit summary table are designed to provide an efficient index to applicable requirements for emission units at sites subject to the operating permit program, to allow regulators, companies, and the public to “match” the requirement to the emission unit and avoid enforcement problems that could result from transcription errors or misinterpretations associated with paraphrasing the underlying applicable requirement. The ED therefore requires applicants to provide detailed information regarding each emission unit in order to verify the relevant applicable requirements for that unit. The FOP then identifies the relevant citations which document the applicable requirements for each emission unit, with which the applicant must comply and annually certify compliance.

Title 30 TAC §122.142 states that the operating permit shall contain the specific regulatory citations in each applicable requirement identifying the emission limitations and standards. Additionally, EPA discussed the use of incorporation by reference in the preamble to final Part 70 rule, discussing the requirements of § 70.6, Permit Content, stating:

Section 70.6(a)(1)(i) requires that the permit reference the authority for each term and condition of the permit. Including in the permit legal citations to provisions of the Act is critical in defining the scope of the permit shield, since the permit shield, if granted, extends to the provisions of the Act included in the permit. Including the legal citations in the permit will also ensure that the permittee, the permitting authority, EPA, and the public all have a common understanding of the applicable requirements included in the permit. *This requirement is satisfied by citation to the State regulations or statutes which make up the SIP or implement a delegated program. See 57 Fed. Reg. 32250, 32275 July 21, 1992(emphasis added).*

The federally approved operating permit program for Texas has allowed for applicable requirements to be incorporated by reference into the FOP since 1996. *See*, Final Interim Approval, 61 Fed. Reg. 32693, June 25, 1996; Final Full Approval, 66 Fed. Reg. 63318, December 6, 2001; and Final Approval of Resolution of Deficiency, 70 Fed. Reg. 16134, March 30, 2005.

In comments on the proposed final interim approval of the operating permit program, in 1995, the Commission (then-TNRCC) proposed to include a standardized permit provision that incorporated by reference all preconstruction authorizations, both major and minor, to resolve the EPA-identified deficiency of Texas' failure to include minor NSR as an applicable requirement. In the June 25, 1996 Final Interim Approval, EPA directed, “the State must be quite clear in any standardized permit provision that all of its *major 'preconstruction authorizations* including

permits, standard permits, flexible permits, special permits, or special exemptions' are incorporated by reference into the operating permit *as if fully set forth therein* and therefore enforceable under regulation XII (the Texas Operating Permit Regulation) as well as regulation VI (the Texas preconstruction permit regulation)." (61 Fed. Reg. at 32695, emphasis added.) Given this explicit direction in EPA's 1996 final interim approval of the Texas program, TCEQ understood that the standardized permit provision for preconstruction authorizations incorporated all NSR authorizations by reference, including major NSR.

As a result of Texas' initial exclusion of minor NSR as an applicable requirement of the Texas Operating Permit program, and EPA's final interim approval of a program that provided for a phase-in of minor NSR requirements using incorporation by reference, EPA was sued by various environmental groups. *See, Public Citizen, Inc. v. U.S. E.P.A.*, 343 F.3d 449 (5th Cir. 2003). The petitioner in that matter raised several issues, including the use of incorporation by reference of minor NSR, because the exclusion of minor NSR as an applicable requirement was a program deficiency identified by EPA. Petitioners acknowledged that Texas' Operating Permit program incorporates all preconstruction authorizations by reference, through use of a table entitled "Preconstruction Authorization References". The Petitioner's brief in that case included an example of this table, which clearly contains sections for Prevention of Significant Deterioration (PSD), nonattainment (NA), 30 TAC Chapter 116 Permits, Special Permits and Other Authorizations, and Permits by Rule under 30 TAC Chapter 106. *See, Brief of Petitioners*, p. 30. The Department of Justice (DOJ), representing EPA, responded to this allegation of improper use of IBR in the context of the specific allegation – whether "EPA reasonably determined that Texas corrected the interim deficiency related to minor new source review", answering unequivocally "yes". "Nothing in the statute or regulations prohibits incorporation of applicable requirements by reference. The Title V and Part 70 provisions addressing the content of Title V permits specify what Title V permits 'shall include,' but do not speak to *how* the enumerated items must be included (emphasis added)." *See, Brief of Respondents*, pp. 25-26. The Court agreed that incorporation by reference is permissible stating. "The Title V and Part 70 provisions specify what Title V permits 'shall include' but do not state how the items must be included. The court notably did not distinguish between minor and major NSR when stating that IBR was permissible under both Title V and Part 70.

Thus, it is the ED's position that incorporation by reference of both major and minor NSR permits is acceptable and was fully approved by EPA. The ED will continue efforts with EPA on how to resolve IBR of major NSR on a broader, programmatic basis.

The commenter is incorrect that EPA has already disapproved TCEQ's use of IBR, citing the recent CITGO Order. In fact, EPA has not objected to TCEQ's incorporation of minor NSR and permits by rule (PBRs) in this Orders. EPA specifically granted the petition in regard to incorporation of major NSR permits. This Orders is not a final action, and the ED respectfully disagrees with EPA's interpretation of their approval of Texas' operating permit program on this issue, as discussed above.

NSR authorizations, emission limits, terms and conditions and monitoring requirements are all

applicable requirements of the operating permit to which they are incorporated, whether this is done by reference, or as part of the permit. NSR permit terms, conditions and emission limits are subject to the reporting, deviation and compliance certification requirements of the operating permit program as defined in Chapter 122 of the TAC. Unlike in many other states, incorporation by reference is particularly appropriate in Texas where the preconstruction permits are separate authorizations from the operating permit. The procedures for issuance, amendment and renewal of preconstruction permits are also separate and distinct processes from the operating permits program, and these larger facilities frequently make changes at their sites requiring changes to NSR permits.

These permits can be found in the main TCEQ file room, located on the first floor of Building E, 12100 Park 35 Circle, Austin, Texas. The Air Permits Division does have a standardized naming system for documents. The document type, permit number, company name, and project type are included in the subject line of the document. This naming system has been in place for several years. However, older projects may not be identified as such. The TCEQ is glad to assist any member of the general public or EPA with finding any documents or answering questions regarding them. The Office of Small Business and Environmental Assistance Division (Public Inquiries About Permitting) may be contacted at 1-800-687-4040 for help with any question.

COMMENT 2: *The draft permit impermissibly incorporates permits by rule.* The draft permit incorporates over a dozen permit by rule (PBR) authorizations, the text of which never appear in the draft renewal or its statement of basis. See the New Source Review Authorization References Table on *Draft p. 24*, incorporating among others, PBRs 101.261, 101.262.

These PBRs, for example, do not include specific emission limits and fail to include adequate monitoring and reporting requirements and compliance timeframes that violate EPA guidance and prior SIP approvals. Although TCEQ currently allows major sources to authorize emissions through PBRs, EPA has stated that it was approving the use of PBRs only for non-major facilities. See EPA's approval of Texas' general PBR provisions into the SIP. 68 FR 64543, 64544 (Nov. 14, 2003).

EPA guidance provides that facilities with emissions even approaching the major source threshold must authorize emissions through a case-by-case review of an individual permit. *Potential to Emit Guidance for Specific Source Categories* (April 14, 1998) p. 2. (Case-by-case reviews are "essential for complex sources warranting close scrutiny... and sources that limit their emissions to near-major amounts.") The Texas Health and Safety Code likewise prohibits the use of PBRs by "major" facilities. Tex. Health & Safety Code § 382.05196(a). These limits are intended to both ensure that federal major NSR requirements are met and to protect the NAAQS. Despite these limits, Texas allows major sources to authorize increases in emissions through PBRs. As a result sources are allowed to modify their major source NSR permit requirements without complying with federal public participation requirements.

The Clean Air Act requires SIPs to include provisions for regulating the modification and construction of stationary sources as necessary to assure compliance with the NAAQS. 42 U.S.C. §§ 7410(a)(2)(A)-(C). Texas PBRs must, therefore, include provisions to assure such

compliance, including provisions making the permits practicably enforceable.¹

EPA, however, has repeatedly notified Texas that its existing PBRs are inconsistent with the approved SIP and EPA policy and do not assure compliance. PBRs cannot be used to authorize emissions from major sources, cannot be used to amend individual permits, must be source specific and must not be incorporated into the proposed renewal draft. Use of these permits and incorporation of them into this Title V permit jeopardize air quality and thwart public participation while also conflicting with Texas' statutory law, EPA guidance and EPA action on Texas' and other states' SIPs.

Specific problems with the incorporation of PBRs into the Title V permit include the following:

- Interference with attainment or maintenance of the NAAQS. In order to assure protection of the NAAQS, Texas' PBR program must include a mechanism for denying PBR authorizations for cause. CAA § 110(a)(2)(c); 40 C.F.R. § 51.160. There must be preauthorization review of applications for coverage under individual PBRs to assure the emissions authorized by PBRs will not contribute to violations of control strategies or interfere with attainment or maintenance. *See* 71 Fed. Reg. 14439, 14441 (March 22, 2006) ("EPA proposes a conditional approval because this rule, as adopted by the Missouri Air Conservation Commission on June 26, 2003, does not expressly include a mechanism for pre-construction review of [PBR] applications ..."). Texas rules include no provision for pre-construction review of PBR applicability claims.
- Lack of Adequate Public Participation: Because PBRs do not contain detailed provisions relating to emission limits and compliance (these are often found in the registrations, which are submitted after the close of public comment), the public is not given an adequate opportunity to comment when PBR rules are issued. Further, Texas rules expressly require PBRs to be "incorporated" into a facility's permit when the permit is amended or renewed. 30 Tex. Admin. Code § 16.1 16(d). Texas "incorporation" procedures do not provide adequate public participation or meet other requirements for permit amendments.

To the extent PBRs are used at a major facility, used to amend an individual permit, or are non source category specific, they violate the Texas SIP and EPA policy and prior SIP decisions. To assure compliance with the Act, Total must obtain valid authorizations, such as permit

¹ EPA has repeatedly found that, to be practicably enforceable, minor source permits must: (1) apply to a clearly defined category of sources that is narrow enough to allow specific limits and compliance monitoring to be identified and achieved by all sources in the category, (2) include technically accurate limits providing assurance that emissions will not exceed federal thresholds, (3) include a compliance timeframe (hourly/daily, etc.), and (4) include specific compliance monitoring method sufficient to protect the standard involved. *Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and Section 112 Rules and General Permits*. (Jan. 25, 1995); *See also*, 61 FR 53633, 53635 (Oct. 15, 1996) and 62. FR 2587, 2589 (Jan. 17, 1997). Similarly, the Texas Health and Safety Code requires that PBRs apply only to "types of facilities that will not significantly contribute air contaminants to the atmosphere" and only to "similar" facilities. Tex. Health & Safety Code §382.05 1(b)(4).

amendments, for any emissions currently authorized through illegal PBRs.² Until it does so, Total is in ongoing noncompliance with the Clean Air Act.

RESPONSE 2: Texas' general PBR rules are approved as part of the SIP. In addition, Chapter 106, Subchapter A is a defined applicable requirement under Chapter 122 and the EPA-approved Texas operating permit program.³ Subchapter A includes applicability, requirements for permitting by rule, registration of emissions, recordkeeping and references to standard exemptions and exemptions from permitting. Additionally, PBR authorizations can apply to distinct, insignificant sources of emissions (i.e. engine, production process, etc.) at a Title V site. As such PBRs do not violate the SIP, EPA policy or prior SIP decisions; nor is incorporation of PBRs in to Dow's operating permit impermissible. All current and historical PBRs and standard exemptions (predecessors to PBRs) are available on the TCEQ website for review. Title 30 TAC Chapter 106 provides types of authorizations for certain types of facilities or changes within facilities which the Commission has determined will not make a significant contribution of air contaminants to the atmosphere. A PBR is a permit which is adopted under Chapter 106, and is only available to sources which belong to categories for which the Commission has adopted a PBR in that chapter. A PBR cannot be used to amend an individual NSR permit. TCEQ rule 30 TAC §116.116(d), which is SIP-approved, sets forth that all changes authorized under Chapter 106 to a permitted facility shall be incorporated into that facility's permit when the permit is amended or renewed. Therefore, the ED disagrees with the assertion that PBR incorporation into FOPs is impermissible.

Different versions of PBRs are related to specific facilities or changes claimed at a specific moment in time. Specific versions only apply to a particular facility when the construction or change occurred under 106.4. Some of the PBRs claimed do not require registration (specifically 106.183 for boilers, heater and other combustion devices; 106.472 for organic and inorganic liquid loading and unloading; 106.478 for storage tank and change of service; and 106.371, cooling water units), thus, authorization letters will not always be available for those particular PBRs.

Regarding specific problems the commenter describes with PBRs (i.e. public participation, interference with the NAAQS), these issues are beyond the scope of this FOP action.

COMMENT 3: *The draft permit fails to require adequate compliance certification.* The compliance certification provision in a Title V permit must meet the requirements set out at 30 TAC § 122.146 and 40 C.F.R. §70.5(c)(9). The compliance certification should, at a minimum, certify compliance with the monitoring method for every limit. Specifically, the certification should be "a statement of methods used for determining compliance, including a description of

² Although the last paragraph of this comment refers to "Total", TCEQ assumes that the commenter meant to refer to Dow.

³ Texas Health & Safety Code (THSC) § 382.05196 and implementing rules in 30 TAC chapter 106, relating to PBRs, prohibit an owner or operator of a facility from using a PBR to authorize a major stationary source or major modification. This does not preclude the use of a PBR for non-major changes at a major stationary source, as that term is defined in federal law.

monitoring, recordkeeping, and reporting requirements and test methods.” 40 C.F.R. 70.5(c)(9)(ii). The draft permits fail to adequately address these requirements.

RESPONSE 3: Special Condition 11 of the draft permit is in compliance with the specific requirements of the EPA approved Federal Operating Permit program, as found in 30 TAC Chapter 122. Specifically, § 122.146(5), requires the annual compliance certification to include or reference the specified elements, including: the identification of each term or condition of the permit for which the permit holder is certifying compliance, the method used for determining the compliance status of each emission unit, and whether such method provides continuous or intermittent data; for emission units addressed in the permit for which no deviations have occurred over the certification period, a statement that the emission units were in continuous compliance over the certification period; for any emission unit addressed in the permit for which one or more deviations occurred over the certification period, specific information indicating the potentially intermittent compliance status of the emission unit; and the identification of all other terms and conditions of the permit for which compliance was not achieved. All permit holders are required to comply with the requirements of 30 TAC § 122.146, as well as all other rules and requirements of the commission.

In addition, in 2006, EPA's Title V Task Force endorsed the 'short-form' approach used by TCEQ, as an option for compliance certification. (*See* Title V Task Force, Final Report to the Clean Air Act Advisory Committee, page 108 (April 2006)).

In order to clarify Special Condition 11, the term has been revised to read as follows:

“The permit holder shall certify compliance in accordance with 30 TAC § 122.146. The permit holder shall comply with 30 TAC § 122.146 using at a minimum, but not limited to, the continuous or intermittent compliance method data from monitoring, recordkeeping, reporting, or testing required by the permit and any other credible evidence or information. The certification period may not exceed 12 months and the certification must be submitted within 30 days after the end of the period being certified.”

COMMENT 4: *Title V permits must include monitoring sufficient to assure compliance.* As the Texas Commission on Environmental Quality (TCEQ) is aware, Title V permits must include monitoring requirements sufficient to assure compliance with applicable emission limits and standards. On August 19, 2008, the D.C. Circuit Court of Appeals vacated an EPA rule that would have prohibited TCEQ and other state and local authorities from adding monitoring provisions to Title V permits if needed to “assure compliance,” *Sierra Club, et al., v. EPA*, 536 F.3d 673 (D.C. Cir. 2008). The Court emphasized the statutory duty to include adequate monitoring in Title V permits:

Title V is a complex statute with a clear objective: it enlists EPA and state and local environmental authorities in a common effort to create a permit program for most stationary sources of air pollution. Fundamental to this scheme is the mandate that “[e]ach permit... shall set forth ...monitoring...requirements to assure compliance with the permit terms and conditions.” 42 U.S.C. § 7661c(c). By its terms, this mandate means

that a monitoring requirements insufficient “to assure compliance” with emission limits has no place in a permit unless it is supplemented by more rigorous standards.” *Id* at 677.

In addition, the Court acknowledged that the mere existence of periodic monitoring requirements may not be sufficient. *Id* at 676-677.

Has TCEQ conducted a review of the monitoring provisions for the renewal draft permit to ensure that it complies with the court ruling and recent orders from the Administrator? Similarly, has TCEQ conducted a review of the monitoring provisions of the multiple permits that are incorporated by reference into the renewal draft permit? TCEQ should review and implement the Title V monitoring provisions to ensure that provision is in compliance with the CAA and the Court's recent opinion. Wherever possible, the permit should require continuous emission monitoring that clearly measures compliance based on the averaging period in the underlying standard. For example, compliance with an emission limit that has to be met on a daily basis should be measured every day, not once a year. Where continuous monitoring is not available, the permit should require alternative methods that more closely match monitoring frequently to the averaging time for compliance.

RESPONSE 4: Consistent with 40 CFR Part 70, the Dow permit includes: (1) monitoring sufficient to yield reliable data from the relevant time period that is representative of compliance with the permit; and (2) monitoring sufficient to assure compliance with the terms and conditions of the permit. The ED has determined that the monitoring required by this permit demonstrates compliance for the applicable state and federal requirements. For those requirements that do not include monitoring, or where the monitoring is not sufficient to assure compliance, the federal operating permit includes such monitoring for the emission units affected. No additional periodic monitoring or compliance assurance monitoring (CAM) was identified for emission units after a review of applicable requirements determined that additional monitoring was not needed to assure compliance. Each applicable requirement is reviewed to determine whether monitoring, recordkeeping, reporting, and testing (MRRT) are sufficient to assure compliance with that standard or requirement. Applicable requirements undergo this review when the requirement changes to ensure consistent application of MRRT sufficient to assure compliance for all permits that contain the applicable requirement. If additional monitoring is required, it is included in the “Additional Monitoring Requirements” attachment of the permit and the basis of the monitoring is included in the Statement of Basis.

In Special Conditions 3, 11 and 18, Dow maintains a copy of the permit along with records containing the information and data (gathered through monitoring) sufficient to demonstrate compliance with the permit, including production records and operating hours. The Maximum Allowable Emission Rate Limits were calculated using the maximum firing rate, the heating value of the fuel (the value is looked up from a table) and an emission factor taken from AP-42, Chapter 1, or provided by the vendor. The monitored fuel flow rate, with the heating value of the fuel and the factor that was used to calculate the maximum allowable emission rate, is used to calculate the actual emission rate to demonstrate compliance, unless a CEMS is utilized.

Texas Health and Safety Code (THSC) § 382.016 authorizes the TCEQ to prescribe reasonable

requirements for measuring and monitoring the emissions of air contaminants from a source. Similarly, 30 TAC § 116.111(a)(2)(B) states that “the proposed facility will have provisions for measuring the emission of significant air contaminants as determined by the Executive Director. This may include the installation of sampling ports on exhaust stacks . . .” It is clear that the state rules do not require CEMS for every type of air pollutant compound emitted.

Dow's permit, consistent with 40 CFR Part 70, includes sufficient monitoring in the terms and conditions, and no emission unit specific additional monitoring are required. This permit demonstrates compliance to the applicable state and federal requirements.

The following EPA Objection was received:

Objection to Special Permit Condition 3. Page 4 - Under the *Special Terms and Conditions* provisions of the draft Title V permit, Condition 3 requires stationary vents with certain flow rates comply with identified provisions of 30 TAC Chapter 111 of Texas SIP. However, there is no identification of the specific stationary vents that are subject to those requirements. As such, this condition fails to meet the requirement of 40 CFR § 70.6(a)(1), in that the condition lacks the specificity to ensure the compliance with the applicable requirements associated with those unidentified emission units. In addition, the Statement of Basis document for the draft Title V permit does not provide the legal and factual basis for Condition 3, as required by 40 CFR § 70.7(a)(5). Pursuant to 40 CFR § 70.8(c)(1), EPA objects to the issuance of the Title V permit since Condition 3 is not in compliance with the requirements of 40 CFR § 70.8(c)(1) and 70.7(a)(5). In response to this objection, TCEQ must revise Condition 3 of the draft Title V permit to list the specific stationary vents that are subject to the specified requirements of 30 TAC Chapter 111 and provide an explanation in the Statement of Basis for the legal and factual basis for Condition 3.

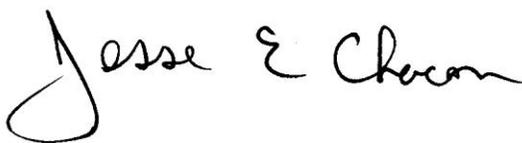
TCEQ RESPONSE: The objection refers to Special Condition 3, for opacity standards for stationary vents that have a flow rate less than 100,000 actual cubic feet per minute 30 TAC §§ 111.111(a)(1)(A) & (B). The TCEQ designated in the FOP that the Chapter 111 visible emission requirements for these units as site-wide requirements - applying uniformly to the units or activities at the site. Because the Applicant indicated in its application that *only* the Chapter 111 site-wide requirements apply to these stationary vents and other sources, the Applicant is not required to list these smaller units individually in the unit summary; therefore, these emission units do not appear in the applicable requirements summary table (emphasis added). The EPA has previously supported the practice of not listing emission units in the permit that only have site-wide or “generic” requirements. *See, White Paper for Streamlined Development of Part 70 Permit Applications*, July 10, 1995. Stationary vents constructed on or before January 31, 1972, meet requirements of 30 TAC § 111.111(a)(1)(A) which states that opacity shall not exceed 30% averaged over a six-minute period. Stationary vents constructed after January 31, 1972 meet requirements of 30 TAC § 111.111(a)(1)(B) which states that opacity shall not exceed 20% averaged over a six-minute period. Subsection 111.111(b) merely states that any of the emission units subject to Section 111.111 (for this permit area, this would include all stationary vents and

gas flares) shall not include contributions from uncombined water in determining compliance with this section.

A determination of the legal and factual basis for Condition 3 was added to the Statement of Basis document for the draft Title V permit and is enclosed.

TCEQ acknowledges the additional concerns EPA has with the Chemicals and Metals (2) FOP and will address these issues as appropriate.

Respectfully submitted,

A handwritten signature in black ink that reads "Jesse E Chacon". The signature is written in a cursive style with a large initial "J".

Jesse E. Chacon, P.E., Manager
Operating Permits Section
Air Permits Division